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MAY 16 1980

Supreme Court, U.S.
FILED
MAY 15 1980
MICHAEL RODAK, JR., CLERK

No. 79-1386

In the Supreme Court of the United States

OCTOBER TERM, 1979

UNITED STATES POSTAL SERVICE, PETITIONER

v.

UNITED PARCEL SERVICE, INC., ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

REPLY BRIEF FOR THE PETITIONER

WADE H. MCCREE, JR.
Solicitor General
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Washington, D.C. 20530

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Respondents attempt to minimize the importance of the decision below by arguing (Br. in Opp. 6-9) that, notwithstanding the court of appeals' ruling, the Postal Service remains free to engage in meaningful experimentation "with new mail processing machinery and equipment, new mail handling methods, or other new procedures," without first seeking the approval of the Postal Rate Commission. Respondents also suggest (Br. in Opp. 4 n.2) that the Rate Commission has already rejected one version of the reduced parcel post rates embodied in the Local Parcel Service Test Plan.[1] The

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[1]In fact, the 1978 Parcel Post Proposal that was rejected by the Commission differed substantially from the package of rates and services offered to the 20 volunteer shippers that participated in the Local Parcel Service Test Plan. These differences are irrelevant for present purposes, because the significance of the 1978 proceeding

1978 Commission proceeding to which respondents refer, however, demonstrates graphically why the kind of experimentation that respondents regard as legitimate is inadequate to enable the Postal Service to develop new rate and classification proposals that stand a reasonable chance of being approved by the Commission.

The critical feature of the Commission's decision on the 1978 proposal is that the rejection was based on the Service's failure "to provide adequate proof of the conclusions regarding operations, costs, and rate structure upon which the Service's proposal depends." *Parcel Post Proposal, 1978*, Opinion and Recommended Decision, Postal Rate Commission Docket No. MC 78-1, at 11 (Dec. 5, 1979). The Commission concluded that the Service did not present sufficient data in support of (1) the asserted cost differential between machinable and nonmachinable parcels (*id.* at 44-45), (2) the so-called "acceptance adjustment" for existing costs that would not be incurred and new costs that would be incurred if the revised bulk mail classification were accepted (*id.* at 46-47), and (3) the anticipated increase in parcel post volume that the proposal would generate (*id.* at 52-55). The Commission "encourage[d] the Service to conduct further study and data-gathering efforts in order to establish quantifiable relationships among different sub-categories of parcel post mail" (*id.* at 11). At the same time, the Commission warned that it would be able to recommend

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does not depend on the particular characteristics of the rate and classification proposal presented to the Rate Commission. A summary of the details of the 1978 proposal may be found in *Parcel Post Proposal, 1978*, Opinion and Recommended Decision, Postal Rate Commission Docket No. MC 78-1, at 12-27 (Dec. 5, 1979).

rate and classification changes in the future "only if specific, detailed empirical evidence is forthcoming from the Postal Service" (*ibid.*).

It was precisely in order to gather this kind of empirical evidence that the Service undertook the Local Parcel Service Test Plan now at issue. Far from supporting respondents' position, therefore, the Commission decision provides convincing evidence of the need for Postal Service rate and classification experiments before proposed changes are submitted to the Commission. Without the kind of information that such experiments will produce, the Commission will generally be unable to make appropriate findings concerning the statutory criteria for permanent rate and classification changes set forth in 39 U.S.C. 3622 and 3623.

For these reasons and the reasons stated in the petition, it is respectfully submitted that the petition for a writ of certiorari should be granted.

WADE H. MCCREE, JR.
Solicitor General

MAY 1980

DOJ-1980-05